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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,109	05/31/2006	Wolfgang von Deyn	13779-67	5188
45473 7590 06/23/2009 BRINKS, HOFER, GILSON & LIONE P.O. BOX 1340 MORRISVILLE, NC 27560				
EXAMINER HOLLOMAN, NANETTE				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
06/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/581,109

**Applicant(s)**

VON DEYN ET AL.

**Examiner**

NANNETTE HOLLOMAN

**Art Unit**

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15, 18-22 and 27-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 18-22 and 27-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is in response to the Request for Continued Examination filed on April 22, 2009. Applicants' arguments, filed April 22, 2009, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

#### ***Claim Rejections - 35 USC § 102 (Previous Rejection)***

Claims 15-17, 19-20 and 23-26 were rejected under 35 U.S.C. 102(b) as being anticipated by Furch et al. (EP 0604798). This rejection is maintained.

#### **Applicant's Argument**

Applicant argues Furch et al. relates to plant protection in the agricultural field and discloses the insecticidal and acaricidal activity of N-arylhydrazine derivatives and other compounds against crop pest. Applicant further argues none of the species tested are classified in the orders recited in amended claim 15. These arguments are not found persuasive.

Examiner's Response

As previously asserted by the Examiner in regard to Furch et al., in claim 1 Furch et al. disclose a method for the control of insect or acarid pests which comprises contacting said pests or their food supply or habitat or breeding grounds with an N-arylhydrazine derivative as claimed by applicant. Included in the insect species are ants, bees and wasps (Hymenoptera) as disclosed by the Columbia Encyclopedia, and are disclosed by Applicant as non-crop pest (specification, p. 3, lines 18) in instant claims 16-17 and 23-26. The reference does not have to disclose examples of every embodiment in order for that embodiment to be encompassed by the reference. Therefore the reference encompasses the instant claims.

***Claim Rejections - 35 USC § 103 (Previous rejection)***

Claims 18, 21-22 and 27-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Furch et al. and in further view of Drabb, Jr. (US Patent No. 4,152,436). This rejection is maintained.

Applicant's Argument

See Applicant's arguments and Examiner's response supra in regards to Furch et al. Applicant further argues Drabb discloses a structurally different compound and the compounds of Drabb and Furch have a completely different mode of action.

Examiner's Response

In regards to Drabb, Jr., the referenced art is disclosed to list the method of treatment, protection of non-living organic material, livestock, and humans and not the compound. Drabb, Jr. further disclosed the use of a compound as bait, which poses little or no hazard to non-target organisms that may frequent the infested area (column 5, lines 66-68). The rationale as disclosed in the Office Action filed March 13, 2008, p.6, is to protect houses, animals and humans, and therefore one would be motivated to make the baits of Drabb, Jr. with the compounds of Furch et al.

***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANNETTE HOLLOMAN whose telephone number is (571) 270-5231. The examiner can normally be reached on Mon-Fri 800am-500pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. H./  
Examiner, Art Unit 1612

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612